

Bell Atlantic
1300 I Street N.W.
Suite 400W
Washington, DC 20005

Patricia E. Koch
Assistant Vice President
Federal Regulatory
(202) 336-7823
(202) 336-7866 (Fax)

ORIGINAL



Ex Parte

November 23, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RECEIVED
NOV 23 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

RE: CC Docket No. 99-295 and CC Docket No. 98-184

Dear Ms. Salas:

Please include a copy of this correspondence dated November 22, 1999 from James R. Young of Bell Atlantic to Dorothy Attwood of the Chairman's office in the public record of the above-captioned proceedings. Any questions on this filing should be directed to me the address or phone number above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia E. Koch".

cc: Dorothy Attwood

No. of Copies rec'd
1 of ABCDE

013

Bell Atlantic Corporation
1095 Avenue Of The Americas
New York, NY 10036
212 395-1162 Fax 212 597-2587
E-Mail: james.r.young@BellAtlantic.com

James R. Young
Executive Vice President & General Counsel



November 22, 1999

RECEIVED
NOV 23 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hand-delivered

Dorothy Attwood, Esquire
Legal Advisor to the Chairman
Federal Communications Commission
2025 M Street, NW – Suite 8B201
Washington, D.C. 20036

Dear Dorothy:

Enclosed is the FLAG Atlantic Limited decision to which I referred last week, together with FLAG Atlantic's underlying application for landing rights. The structure of FLAG Atlantic is discussed in Appendix C, pages 2-3 at note 1. You will note that until long distance relief, Bell Atlantic would own less than 5% in the long distance entity. After long distance approval, Bell Atlantic can exercise an option, at an already negotiated price, to take a 37.68% interest in the long distance entity.

If you have any questions, please give me a call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jim Young".

Enclosures

T100199A

Federal Communications Commission

DA 99-2041

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
FLAG ATLANTIC LIMITED)
)
Application for a license to land and operate in the) File No. SCL-LIC-19990301-00005
United States a private fiber optic submarine cable)
system extending between the United States)
and the United Kingdom and France)

CABLE LANDING LICENSE

Adopted: September 30, 1999

Released: October 1, 1999

By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we grant the application of FLAG Atlantic Limited (FLAG Atlantic) under the Cable Landing License Act¹ for authority to land and operate a private fiber optic submarine cable system to be called "FLAG Atlantic-1," extending between the United States and the United Kingdom and France. This system will be operated on a non-common carrier basis. We find that FLAG Atlantic has provided sufficient information under our rules to comply with the Cable Landing License Act and that it would serve the public interest to grant the cable landing license subject to the conditions listed below.

II. Application

2. FLAG Atlantic is a joint venture company organized and existing under the laws of Bermuda. Two Bermuda holding companies, FLAG Atlantic Holdings Limited (FAH) and GTS TransAtlantic Holdings, Ltd. (GTS TransAtlantic), hold 50% of FLAG Atlantic. FAH is a direct wholly-owned subsidiary of FLAG Telecom Holdings Limited, a Bermuda holding company. GTS TransAtlantic is an indirect wholly-owned subsidiary of Global TeleSystems Group, Inc., a publicly-traded Delaware corporation.

3. The proposed FLAG Atlantic-1 system will be a loop system consisting of three undersea segments extending between the United States and Europe. As illustrated in the attached Exhibit A, Segment N will be the whole of the submarine cable system provided between and including the system interfaces at the cable stations on the north shore of Long Island, New York and at Cornwall, England. Segment S will be the whole of the submarine cable system provided between and including the system interfaces at the cable stations on the south shore of Long Island and at Brittany, France. Segment E will be the whole of the submarine cable system provided between and

¹ An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act).

including the system interfaces at the cable stations at Cornwall, England and Brittany, France. The exact landing sites and the exact locations of the landing stations have not yet been finalized.

4. FLAG Atlantic-1 will use laser-generated light to transmit digital information over four optical fiber pairs on Segments N and S of the system and over six optical fiber pairs on Segment E of the system. The system will be based on synchronous digital hierarchy and will use dense wave division multiplexing. The system will be constructed in a self-healing ring architecture. The total capacity of the system will be 1.28 terabits per second, which is approximately 25 times the capacity of current trans-Atlantic technology. Initially, the system will have a capacity of 160 Gbps, with upgrade potential in 160 Gbps (or multiples thereof) increments as demand warrants. FLAG Atlantic-1 is expected to be placed in service in October 2000.

III. Comments

5. The International Bureau issued a public notice of the FLAG Atlantic application on March 26, 1999. We received no comments on the application. Pursuant to Section 1.767(b) of the Commission's rules,² the Cable Landing License Act, and Executive Order No. 10,530, we informed the Department of State of the application.³ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to issuance of the cable landing license.⁴

² 47 C.F.R. § 1.767(b) (1998)

³ Letter from Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven W. Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Apr. 13, 1999).

⁴ Letter from Richard C. Beard, Acting United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abeison, Chief, International Bureau, FCC (Sept. 23, 1999).

IV. Discussion

A. Private Submarine Cable Policy

6. FLAG Atlantic proposes to operate FLAG Atlantic-1 as a non-common carrier submarine cable system in which capacity will not be offered indifferently to the user public. FLAG Atlantic requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities.⁵ Pursuant to this policy, the Commission has authorized non-common carrier cables where: (1) there is no legal compulsion to serve the public indifferently; and (2) there are no reasons implicit in the nature of the operations to expect an indifferent holding-out to the eligible user public.⁶

7. In applying the first prong of the test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require facilities to be offered on a common carrier basis. This public interest analysis has generally focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities. Where there are sufficient alternatives, the Commission has found that the licensee will lack market power and will not be able to charge monopoly rates for cable capacity. The Commission has found that, in those circumstances, the public interest would be served by allowing a submarine cable to be offered on a non-common carrier basis.⁷

8. No one has suggested that the public interest requires FLAG Atlantic-1 to be operated on a common carrier basis. Nor do we find that FLAG Atlantic controls any bottleneck facilities in the markets FLAG Atlantic-1 proposes to serve.⁸ No commenter has disputed this fact, and we find that, in light of all the circumstances, it would not serve the public interest to impose common carrier regulation on the operations of FLAG Atlantic-1 at this time. We note, however, that we retain the ability to impose common carrier or common-carrier-like obligations on the operations of this or any other submarine cable system if the public interest so requires. Furthermore, we maintain the authority

⁵ See Tel-Optik, Ltd., *Memorandum Opinion and Order*, 100 F.T.R. 1033, 1040-42, 1046-48 (1985); see also Cable & Wireless, plc, *Cable Landing License*, 12 FCC Rcd 8516 (1997) (*Cable & Wireless*).

⁶ See *Cable & Wireless*, 12 FCC Rcd at 8522; see also Optel Communications, Inc., *Conditional Cable Landing License*, 8 FCC Rcd 2267 (1993); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (NARUC I), cert. denied, 425 U.S. 992 (1975).

⁷ See, e.g., *Cable & Wireless*, 12 FCC Rcd at 8523.

⁸ FLAG Atlantic is affiliated with several foreign carriers in Europe, including carriers in France and Germany, the destination countries for FLAG Atlantic-1 (Hermes Europe, Railtel BV, GTS Business Services (UK) Ltd., Esprit Telecom UK Limited, and Esprit Telecom France SA). See application at Attachment B. These are small carriers that do not have more than 50% of the market in any of the key markets for providing international services. See *Rule and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23,391 (1997) recon. pending (*Foreign Participation Order*).

to classify facilities as common carrier facilities subject to Title II of the Communications Act if the public interest requires that the facilities be offered to the public indifferently."

9. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently. FLAG Atlantic states that capacity will not be sold indifferently to the user public. Instead, capacity will be assigned pursuant to "individualized decisions." We therefore conclude that FLAG Atlantic will operate FLAG Atlantic-I on a non-common carrier basis.

10. We conclude that FLAG Atlantic will not offer capacity in FLAG Atlantic-I to the public on a common carrier basis and that the public interest does not require that they do so. Accordingly, we conclude that it is appropriate to license FLAG Atlantic-I on a non-common carrier basis. We also find that FLAG Atlantic will not provide a telecommunications service for a fee to such a class of users as to be "effectively available directly to the public" and thus will not be a "telecommunications carrier" under the Telecommunications Act of 1996.⁹

B. Ownership and Landing Points

11. FLAG Atlantic has provided the ownership information required by sections 1.767(a)(6), 63.18(e)(6), and 63.18(h) of the Commission's rules. A wholly-owned subsidiary of FLAG Atlantic, FLAG Atlantic USA Ltd., will own the U.S. cable stations, including real property, buildings and terminal equipment, as well as the U.S. territorial portions of the submarine cable from the landing stations to the U.S. territorial limit. The two foreign cable stations and the portions of the submarine cable within British and French territorial limits will be owned by wholly-owned subsidiaries of FLAG Atlantic in each country.¹⁰ FLAG Atlantic itself will own the remaining portions of the FLAG Atlantic-I system.

12. The application states that FLAG Atlantic-I will land on both the north and south shore of Long Island, New York; Cornwall, United Kingdom; and Brittany, France. We find the applicant's description of the likely landing points to be sufficient to determine that the proposed cable system complies with the provisions of the Cable Landing License Act and Commission rules. Section 1.767(a) of the Commission's rules permits applicants in an initial application to provide a general description of the landing points.¹¹ The applicant, however, must file a specific description of the landing points, including a map, no later than 90 days prior to construction at that landing point. The

⁹ See, e.g., *Foreign Participation Order*, 12 FCC Rcd at 23,934 ¶ 95; *Cable & Wireless*, 12 FCC Rcd at 8530 ¶ 39; AT&T Corp. et al., *Cable Landing License*, 13 FCC Rcd 16,232, 16,237 ¶ 15 (Int'l Bur. 1998) (*China-US Cable Landing License*).

¹⁰ See 47 U.S.C. § 153(44) (defining "telecommunications carrier"); *Cable & Wireless*, 12 FCC Rcd at 8523.

¹¹ FLAG Atlantic (UK) Ltd., will own the U.K. landing station as well as the corresponding portions of the system landing in the United Kingdom. FLAG Atlantic (France), S.A., will own the landing station in France as well as the corresponding portions of the system located in France.

¹² 47 C.F.R. § 1.767(a)(5) (1997).

Commission will give public notice of the filing of the specific description, and grant of the license will be considered final with respect to that landing point unless the Commission notifies the applicant to the contrary no later than 60 days after receipt of the specific description of the landing points.

C. Environmental Impact

13. The Commission has found that the construction of new submarine cable systems, individually and cumulatively, will not have a significant effect on the environment and therefore should be expressly excluded from our procedures implementing the National Environmental Policy Act of 1969.¹³ Therefore, the Applicant is not required to submit an environmental assessment, and this application is categorically excluded from environmental processing.

V. Conclusion

14. We grant FLAG Atlantic's application for authority to land and operate a non-common carrier fiber optic submarine cable extending between the United States and the United Kingdom and France, subject to the conditions listed below.

VI. Ordering Clauses

15. Consistent with the foregoing, we hereby GRANT AND ISSUE FLAG Atlantic a license to land and operate a non-common carrier fiber optic submarine cable system (consisting of four optical fiber pairs on Segments S and N and six optical fiber pairs on segment E, with 160 Gbps capacity upon completion, and upgradeable to 1.28 terabits per second) extending between landing points at cable stations in Long Island, New York; Cornwall, United Kingdom; and Brittany, France, under the provisions of the Cable Landing License Act and Executive Order 10,530. This grant is subject to all rules and regulations of the Commission; any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the Commission or the Congress of the United States rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and the following conditions:

- (1) The location of the cable system within the territorial waters of the United States, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;
- (2) The Licensee shall at all times comply with any requirements of U.S. government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cable from injury or destruction by enemies of the United States;

¹³ See 47 C.F.R. § 1.1306 Note 1 (as amended 1999); 1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations, IB Docket No. 98-118, *Report and Order*, FCC 99-51, ¶¶ 67-69 (rel. Mar. 23, 1999).

(3) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it do not enjoy and shall not acquire any right to handle traffic on a common carrier basis to or from the United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to Section 214 of the Communications Act, as amended;

(4) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it shall not acquire or enjoy any right to land, connect, or operate submarine cables that is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it, controlled by it, or under direct or indirect common control with it are parties;

(5) Neither this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Commission shall give prior consent in writing;

(6) The Licensee shall notify the Commission in writing of the precise locations at which the cable will land. Such notification with respect to any given landing location shall occur no later than ninety days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of this license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty days after receipt of the specific description;

(7) The Commission reserves the right to require the Licensee to file an environmental assessment or environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;

(8) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10,530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(9) The Licensee shall maintain *de jure* and *de facto* control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;

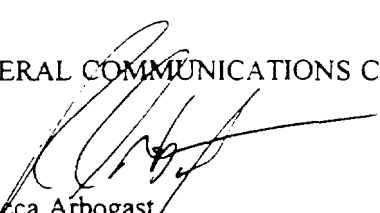
(10) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of "An Act relating to the Landing and Operation of Submarine Cables in the United States"; 47 U.S.C. § 35, or for failure to comply with the terms of this License;

(11) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be terminated; and

(12) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of the cable landing license.

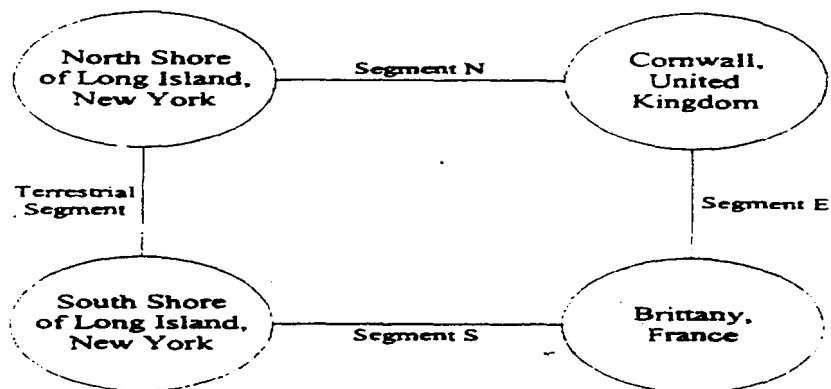
16. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION



Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

EXHIBIT A
FLAG Atlantic-1 Route Sketch



SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL (202) 371-7000
FAX (202) 393-5760

DIRECT DIAL
(202) 371-7288
DIRECT FAX
(202) 371-7096

FIRM/AFFILIATE OFFICES

BOSTON
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FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

March 1, 1999

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
International Bureau - Telecommunications
P.O. Box 358115
Pittsburgh, Pennsylvania 15251-5115

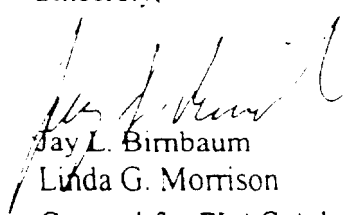
Re: FLAG Atlantic Limited
Application for Non-Common Carrier Cable Landing
License

Dear Ms. Salas:

Enclosed herewith for filing on behalf of FLAG Atlantic Limited ("FLAG Atlantic"), and pursuant to Section 1.767 of the Federal Communications Commission's rules and regulations, 47 C.F.R. § 1.767, please find an original and one (1) copy of an application for a license to construct and operate a non-common carrier submarine cable landing system. In addition, we are enclosing FCC Remittance Advice on FCC Form 159 together with a check in the amount of \$12,975.00 made payable to the Commission to cover the filing fee.

If you have any questions concerning this application, please contact the undersigned.

Sincerely,


Jay L. Birnbaum

Linda G. Morrison

Counsel for FLAG Atlantic Limited

Enclosures

cc: Stuart Rubin
Parminder Dost
Grier Raclin
Hartmut Seibel
Donald Connor

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION

APPROVED BY OMB 3060-0585

REMITTANCE ADVICE

(1) LOCKBOX # 358115

PAGE NO. 1 OF 1

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Skadden, Arps, Slate, Meagher & Flom LLP

(3) TOTAL AMOUNT PAID (dollars and cents)

\$ 12,975.00

(4) STREET ADDRESS LINE NO. 1

1440 New York Ave., N.W.

(5) STREET ADDRESS LINE NO. 2

(6) CITY

Washington

(7) STATE

DC

(8) ZIP CODE

20005

(9) DAYTIME TELEPHONE NUMBER (include area code)

(202) 371-7000

(10) COUNTRY CODE (if not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)

FLAG Atlantic Limited

(12) STREET ADDRESS LINE NO. 1

The Emporium Building

(13) STREET ADDRESS LINE NO. 2

69 Front Street, 4th Floor

(14) CITY

Hamilton HM11

(15) STATE

(16) ZIP CODE

(17) DAYTIME TELEPHONE NUMBER (include area code)

1-441-296-0909

(18) COUNTRY CODE (if not in U.S.A.)

Bermuda

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/OTHER ID

N/A

(20A) PAYMENT TYPE CODE (PTC)

E C T

(21A) QUANTITY

1

(22A) FEE DUE FOR PTC IN BLOCK 20A

\$ 12,975.00

FCC USE ONLY

(23A) FCC CODE 1

(24A) FCC CODE 2

(19B) FCC CALL SIGN/OTHER ID

(20B) PAYMENT TYPE CODE (PTC)

(21B) QUANTITY

(22B) FEE DUE FOR PTC IN BLOCK 20B

\$

FCC USE ONLY

(23B) FCC CODE 1

(24B) FCC CODE 2

(19C) FCC CALL SIGN/OTHER ID

(20C) PAYMENT TYPE CODE (PTC)

(21C) QUANTITY

(22C) FEE DUE FOR PTC IN BLOCK 20C

\$

FCC USE ONLY

(23C) FCC CODE 1

(24C) FCC CODE 2

(19D) FCC CALL SIGN/OTHER ID

(20D) PAYMENT TYPE CODE (PTC)

(21D) QUANTITY

(22D) FEE DUE FOR PTC IN BLOCK 20D

\$

FCC USE ONLY

(23D) FCC CODE 1

(24D) FCC CODE 2

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25)

PAYER TIN

0 1 3 1 7 1 0 3 0

(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-11 IS DIFFERENT FROM PAYER NAME IN A-2

APPLICANT TIN

0 - - - - -

SECTION E - CERTIFICATION

*Foreign Entity

(27) CERTIFICATION STATEMENT

I, Gaston de Bearn

PRINT NAME

Certify under penalty of perjury that the foregoing and supporting information

are true and correct to the best of my knowledge, information and belief. SIGNATURE

Gaston de Bearn

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28)

MASTERCARD/VISA ACCOUNT NUMBER

EXPIRATION DATE

MASTERCARD

MONTH YEAR

VISA

hereby authorize the FCC to charge my VISA or MASTERCARD

AUTHORIZED SIGNATURE

DATE

for the service(s) authorization(s) herein described

Link for Blue Bank logo on the front of this book and the inside cover. Insert for Blue Bank logo on the inside cover.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVE N.W.
WASHINGTON, DC 20005

1689

Federal Communication Commission
Twelve thousand nine hundred seventy five
February 17, 99
\$12,975.00

15 1/2 540 DC
0710

NationsBank
Nations Bank N.A.

...NOT VALID AFTER 60 DAYS...

Barbara J. Bucken

001689 054001204 001933221230

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
FLAG Atlantic Limited)	
)	File No. _____
Application for a License to Land)	
and Operate in the United States a)	
Digital Submarine Cable System)	
Between the United States and the)	
United Kingdom and France)	

APPLICATION FOR CABLE LANDING LICENSE

FLAG Atlantic Limited ("FLAG Atlantic" or the "Applicant") hereby applies, pursuant to "An Act Relating to the Landing and Operation of Submarine Cables in the United States," 47 U.S.C. §§ 34-39 ("Cable Landing License Act"), for a license to land and operate in the United States a private fiber optic submarine cable network extending to the United Kingdom and France. The cable system will be known as "FLAG Atlantic-1."

The proposed FLAG Atlantic-1 cable will be a loop system consisting of three undersea segments extending between the United States and Europe. Specifically, one segment (Segment N) will extend between the north shore of Long Island in New York and Cornwall, United Kingdom. A second segment (Segment S)

will extend between the south shore of Long Island in New York and Brittany, France. Finally, a third segment (Segment E) will extend between Cornwall, United Kingdom and Brittany, France. A route sketch of the FLAG Atlantic-1 system is attached hereto as Exhibit A. The capacity on FLAG Atlantic-1 will be sold or leased to users on a private carriage basis.

COMPLIANCE WITH SECTION 1.767

In accordance with Section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, and Executive Order No. 10530, dated May 10, 1954, the Applicant submits the following information in support of this Application:

- (1) The name, address and telephone number of the Applicant are:

FLAG Atlantic Limited
The Emporium Building
69 Front Street, 4th Floor
Hamilton
HM 12
Bermuda
1-441-296-0909

- (2) The Applicant is a joint venture company organized and existing under the laws of Bermuda. FLAG Atlantic Holdings Limited ("FAH"), a Bermuda holding company, and GTS TransAtlantic Holdings, Ltd. ("GTS TransAtlantic"), a Bermuda holding company, each owns 50 percent of the joint venture. FAH is a direct wholly owned subsidiary of FLAG Telecom Holdings Limited, a Bermuda holding company ("FLAG Holdings"). GTS TransAtlantic is an indirect wholly

owned subsidiary of Global TeleSystems Group, Inc. ("GTS"), a publicly traded Delaware corporation.

(3) Correspondence to the Applicant regarding this Application should be addressed to:

Jay L. Birnbaum, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
Phone: 202-371-7288
Fax: 202-393-5760

with a copy to:

Stuart Rubin, Esq.
FLAG Telecom Limited
103 Mount Street, 3rd Floor
London W1Y 5HE
United Kingdom
Phone: 011-44-171-317-0800
Fax: 011-44-171-317-0808

Grier Raelin, Esq.
Senior Vice President, General Counsel
and Corporate Secretary
Global TeleSystems Group, Inc.
1751 Pinnacle Drive
North Tower, 12th Floor
McLean, Virginia 22102
Phone: (703) 918-4573
Fax: (703) 918-0338

and with a copy to:

Hartmut Seibel
Director of Regulatory Affairs
Hermes Europe Railtel
Terhulpsesteenweg 6A
1560 Hoeilaart
Belgium
Phone: 011-32-2-658-5212
Fax: 011-32-2-658-5110

(4) Description of the FLAG Atlantic-1 system:

The Applicant anticipates commencing operation of the FLAG Atlantic-1 system in October 2000, subject to the timely grant of this Application. To begin operation by that date and to meet its financing contingencies, the Applicant seeks issuance of the landing license by November 1, 1999.

FLAG Atlantic-1 will use laser-generated light to transmit digital information over four optical fiber pairs on Segments N and S of the system and over six optical fiber pairs on Segment E. The FLAG Atlantic-1 cable system will be based on synchronous digital hierarchy ("SDH") and will use dense wave division multiplexing ("DWDM"). The system will be constructed in a self-healing ring architecture. The system is designed to carry voice, high-speed data and video traffic up to a total capacity of 1.28 terabits per second, which is approximately 25 times the capacity of current trans-Atlantic cable technology. As initially constructed the system will have a capacity of 160 Gbps with upgrade potential in 160 Gbps (or multiples thereof) increments as demand warrants.

The general route sketch attached hereto as Exhibit A shows the segments of the proposed system for which the Applicant is seeking authorization. As illustrated in Exhibit A, the submarine portion of the FLAG Atlantic-1 consists of three segments as follows:

Segment N: The whole of the submarine cable system provided between and including the System Interface at the cable landing station on the north shore of Long Island in New York and the System Interface at the cable landing station in Cornwall, United Kingdom.

Segment S: The whole of the submarine cable system provided between and including the System Interface at the cable landing station on the south shore of Long Island in New York and the System Interface at the cable landing station in Brittany, France.

Segment E: The whole of the submarine cable system provided between and including the System Interface at the cable landing station in Brittany, France and the System Interface at the cable landing station in Cornwall, United Kingdom.

The exact landing sites and the exact locations of the landing stations have not yet been finalized. The Applicant will notify the Commission and amend the application to provide this information as soon as possible

The System Interface is defined as a multiple of a Synchronous Transport Module Sixty-Four ("STM-64") transponder based, short haul optical interface to be provided in Submarine Line Termination Equipment ("SLTE") at the landing stations. Segments N and S each will consist of four fiber pairs and Segment E will consist of six fiber pairs. Each fiber pair will be equipped with DWDM technology, and each DWDM system will be capable of carrying 32 wavelengths at STM-64, except for Segment E which will be capable of carrying 40 wavelengths at STM-64 (10 Gbps).

(5) Landing Points:

As described above, FLAG Atlantic-1 will land on the north shore of Long Island in New York; the south shore of Long Island in New York; Brittany, France; and Cornwall, United Kingdom. A specific description of each of these landing locations and accompanying maps will be provided in the future.

(6)(a) Non-Common Carrier Status:

The Applicant will operate the FLAG Atlantic-1 cable system on a non-common carrier, or private carrier, basis. Non-common carrier status is consistent with longstanding Commission and congressional policies and will advance the public interest.

The Commission has a well-established policy of encouraging private submarine cable systems as a means to increase competition in the undersea cable

market.¹ Indeed, since the institution of the Commission's private cable policy, it has authorized many non-common carrier cable landing licenses.² The Commission has authorized non-common carrier cables where (1) there is no compulsion by law to serve the public indifferently and (2) the proposed operations do not reflect that the carrier will hold itself out indifferently to the public.³

¹ See *PC Landing Corp.*, Cable Landing License, File No. SCL-98-006, DA 98-2351, 1998 FCC LEXIS 5927, at *5, para. 6 (Int'l Bur. rel. Nov. 23, 1998) (citations omitted). The Commission adopted its private submarine cable policy in 1985 to promote competition in the provision of international transmission facilities. See *Tel-Optik Ltd.*, 100 F.C.C. 2d 1033, 1040-42, 1046-48 (1985).

² See, e.g., *GST Int'l, Inc.*, Cable Landing License, 12 FCC Rcd 5911 (Int'l Bur. 1997); *SSI Atlantic Crossing, LLC*, Cable Landing License, 13 FCC Rcd 5961 (1997) ("*SSI Atlantic Crossing*"), modified, 13 FCC Rcd 7171 (Int'l Bur. 1998); *MFS Globenet, Inc.*, Cable Landing License, 11 FCC Rcd 12732 (Int'l Bur.), modified, 12 FCC Rcd 8637 (Int'l Bur. 1996); *Orient Express Communications, LLC*, Cable Landing License, 11 FCC Rcd 16306 (Int'l Bur. 1996); *Alaska Northstar Communications, LLC*, Cable Landing License, 11 FCC Rcd 16842 (Int'l Bur. 1996); *AT&T Submarine Sys., Inc.*, Cable Landing License, 11 FCC Rcd 14885 (Comm. Carr. Bur. 1996), modified, 13 FCC Rcd 2983 (Int'l Bur. 1998), application for review denied, File No. S-C-L-94-006, FCC 98-263, 1998 FCC LEXIS 5228 (rel. Oct. 9, 1998); *Optel Communications, Inc.*, Cable Landing License, 8 FCC Rcd 2267 (Comm. Carr. Bur. 1993); *Transnational Telecom Ltd.*, 5 FCC Rcd 598 (1990); *Pacific Telecom Cable*, 4 FCC Rcd 8061 (1989).

³ See *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 640-45 (D.C. Cir.) (discussing and applying definition of common carrier), cert. denied, 425 U.S. 992 (1976) ("*NARUC I*"); *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976) ("*NARUC II*"); see also *PC Landing Corp.*, 1998 FCC LEXIS, at *5-*6, para. 6; *Cable and Wireless Plc*, Cable Landing License, 12 FCC Rcd 8516, 8522 (1997); *MFS* (continued...)

With regard to the first prong of this non-common carrier test for submarine cable authorizations, the Commission has indicated that there is no legal requirement to serve the public indifferently if there is no public interest reason that such services be provided on a common carrier basis.⁴ The Commission's public interest analysis has focused on whether alternative services are available. If sufficient alternatives exist, the Commission has concluded that the licensee will not possess market power and will not have the ability to charge monopoly rates for capacity on the cable.⁵ Hence, the Commission has concluded that the public interest is served in such circumstances by authorizing a submarine cable system to operate on a non-common carrier basis.⁶

The Commission has determined that private cable systems, particularly in the North Atlantic region, introduce important competition that benefits consumers.⁷ Moreover, given the availability of capacity on existing and future

³ (...continued)

Globenet, 11 FCC Rcd at 12734-35, para. 10.

⁴ See *PC Landing Corp.*, 1998 FCC LEXIS 5927, at *6, para. 7.

⁵ See *id.* at *6-*7, para. 7.

⁶ See *id.* at *7, para. 7 (citing *Cable & Wireless, Plc*, 12 FCC Rcd 8516, 8523 (1997)).

⁷ See *SSI Atlantic Crossing*, 13 FCC Rcd at 5963, para. 8 (citing *Tel Optik*, 100 F.C.C.2d at 1053).

cables and satellite circuits between the United States and the United Kingdom,⁸ and between the United States and France,⁹ there is no threat that the proposed cable system could become a bottleneck facility and no competitive concerns are raised by

⁸ See, e.g., *SSI Atlantic Crossing*, 13 FCC Rcd at 5961, 5963 n.12 (authorizing the AC-1 submarine cable system to operate on a non-common carrier basis between the U.S., the United Kingdom, and Germany, and recognizing that the continental U.S. and the United Kingdom are served by Intelsat satellite circuits and various common carrier and non-common carrier undersea cables), *modified*, 13 FCC Rcd 7171 (Int'l Bur. 1998) (adding a landing point in the Netherlands); *Cable & Wireless, PLC*, Cable Landing License, 12 FCC Rcd 8516 (1997) (authorizing non-common carrier submarine cable system between the U.S. and the United Kingdom); *MFS Globenet*, 11 FCC Rcd at 12732, 12736-38 (authorizing landing and operation of MFS-1 and MFS-2 non-common carrier submarine telecommunications cable system – now known as the Gemini Cable System – between the U.S. and the United Kingdom).

⁹ The continental U.S. and France are served by Intelsat satellite circuits as well as by various common carrier submarine cable systems. See, e.g., *In re Direct Access to the INTELSAT System*, IB Docket No. 98-182, FCC 98-280, Notice of Proposed Rulemaking, App. A, 1998 FCC LEXIS 5532, at *80 (recognizing that access to the Intelsat system is authorized in France); *SSI Atlantic Crossing*, 13 FCC Rcd at 5963 n.12 (noting that the U.S. and other countries are served by Intelsat satellite circuits); *American Telephone and Telegraph Co.*, 8 FCC Rcd 4808 (Comm. Carr. Bur. 1993) (authorizing construction of the TAT-12 TAT-13 common carrier submarine cable system between the U.S., the United Kingdom, and France); *American Telephone and Telegraph Co.*, Cable Landing License, 7 FCC Rcd 134 (1992) (authorizing construction and operation of the TAT-11 common carrier submarine cable system extending between the U.S., the United Kingdom, and France); *American Telephone and Telegraph Co.*, Cable Landing License, 3 FCC Rcd 7304 (Comm. Carr. Bur. 1988) (authorizing landing and operation of TAT-9 common carrier submarine cable system between the U.S., Canada, the United Kingdom, France, and Spain).

the Applicant's proposed provision of capacity on a private carriage basis.¹⁰ Consequently, there is no public interest reason to require that capacity on FLAG Atlantic-1 be provided on a common carrier basis.¹¹

As to the second prong of the non-common carrier test, the FLAG Atlantic-1 system should not be subject to common carrier regulation because its capacity will be assigned pursuant to "individualized decisions" and not sold indifferently to the user public.¹² Users of bulk capacity on FLAG Atlantic-1, including common carriers, will be able to obtain capacity on the system on the basis of rights of use. The offering of bulk capacity to a "significantly restricted" class of users, such as common carrier cable consortia, common carriers, and large businesses, shows that the Applicant is not a "telecommunications carrier" under the Telecom-

¹⁰ See *AT&T Submarine Sys.*, 11 FCC Red at 14885, 14896-98, paras. 39-44 (citing *NARUC I*, 529 F.2d at 638) (identifying markets as well as potential competitive effects in markets of the proposed cable, and concluding that cable system could be authorized on a non-common carrier basis).

¹¹ See *Tel-Optik, Ltd.*, 100 F.C.C.2d at 1047 (noting that the Commission's interpretation of the second part of the *NARUC I* test looks at whether there is a public interest reason to require common carriage); see also *SSI Atlantic Crossing*, 13 FCC Red at 5963, para. 8.

¹² See *NARUC I*, 529 F.2d at 642; *SSI Atlantic Crossing*, 13 FCC Red at 5963, para. 9; *MFS Globenet*, 11 FCC Red at 12735, para. 12.

munications Act of 1996.¹³ Consequently, it would be appropriate for the Commission to authorize the FLAG Atlantic-I system on a non-common carrier basis.¹⁴

(6)(b) Ownership Information:

As required by Section 1.767(a)(6) of the Commission's rules, the Applicant submits the following ownership information specified in Sections 63.18(e)(6), (h)(1), and (h)(2) of the Commission's rules:

(i) Information Submitted Pursuant to Section 63.18(e)(6):

A wholly owned U.S. subsidiary of FLAG Atlantic, FLAG Atlantic USA Ltd., will own the U.S. cable landing stations, including the real property, buildings and terminal equipment, and will own the U.S. territory portions of the FLAG Atlantic-I system from the landing stations to the U.S. territorial limit. A wholly owned European subsidiary of FLAG Atlantic, FLAG Atlantic (UK) Ltd., will own the United Kingdom landing station and will own corresponding portions of the system located in the United Kingdom. A wholly owned European subsidiary of FLAG Atlantic, FLAG Atlantic (France), S.A., will own the landing station in France

¹³ See 47 U.S.C. § 153(44).

¹⁴ See *SSI Atlantic Crossing*, 13 FCC Red at 5963-63, paras. 9-10 (concluding that the applicant would not offer capacity on a common carrier basis, that the applicant should not be classified as a "telecommunications carrier" under the 1996 Act, and that the Commission should license the proposed system on a non-common carrier basis).

and will own corresponding portions of the system located in France. FLAG Atlantic itself will own the remaining portions of the FLAG Atlantic-1 system.

(ii) Information Submitted Pursuant to Section

63.18(h)(1):

GTS TransAtlantic is affiliated, within the meaning of 47 C.F.R. § 63.18(h)(1), with the foreign carriers listed in Exhibit B hereto. These carriers lack the ability to discriminate against unaffiliated U.S. carriers through control of bottleneck facilities or facilities in the destination countries.

(iii) Information Submitted Pursuant to Section

63.18(h)(2):

Exhibit C hereto contains the relevant Section 63.18(h)(2) information.

(7) Environmental Impact:

The grant of the requested authorization will not constitute major actions as defined in Section 1.1305 of the Commission's rules. Accordingly, Section 1.1311 of the Commission's rules does not require the submission of environmental information in conjunction with this Application. As the Commission has